

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Richard A. McCarville,
Petitioner-Appellant,

v.

Webster County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-94-0028

Parcel No. 0709329002

On November 1, 2010, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant Richard A. McCarville submitted evidence in support of his appeal and was self-represented. The Board of Review designated Assistant County Attorney Cori Kuhn Coleman as its legal representative and submitted evidence in support of its decision. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Richard A. McCarville, owner of property located at 2917 Oak Tree Circle, Fort Dodge, Iowa, appeals from the Webster County Board of Review decision reassessing his property. The real estate was classified residential for the January 1, 2009, assessment and valued at \$397,280; representing \$57,010 in land value and \$340,270 in the dwelling value. McCarville protested to the Board of Review on the ground that there had been a downward change in value since the last assessment under Iowa Code sections 441.37(1) and 441.35(3). Specifically he stated the appraised value of his property had gone down \$25,000 over the past few years. The Board of Review reduced the assessed value to a total of \$380,260; allocated \$57,010 to the land value and \$323,250 to the dwelling value.

McCarville then appealed to this Board and checked the ground indicating the property was not equitably assessed under Iowa Code section 441.37(1)(a). However, the plain language of his appeal indicates he had an appraisal done and the value went down significantly but the assessment had not. First, we cannot consider the equity claim because it was not pled to the Board of Review. *See* Iowa Code § 441.37A(1). Based on the appeal form, the only real issue before us is whether the property is over-assessed. McCarville believes the correct assessed value is in a range from \$283,000 to \$338,000.

According to the property record card, the subject property is a one-story, brick dwelling having 1941 total square feet of living area, a full basement, and an attached, 812 square-foot garage. The dwelling was built in 2001 and has a 2+5 quality grade. The dwelling is situated on 0.830 acres.

McCarville testified at hearing that there are currently twenty houses on the Fort Dodge multiple list service that have a sales price of over \$200,000. Thirteen are outside the Woodlands addition (the subject property's location) and have a sales price between \$200,000 and \$300,000. Their average asking price is about 12% over their assessed value. Additionally, the four in the Woodlands addition have an asking price about 9.7% over their assessed value. Based on the listing data, he believes the assessed value on his dwelling should be between \$282,720 and \$338,148. We note that the ground on appeal is whether the property is over-assessed, not whether it is equitably assessed, and therefore, a ratio comparison of sales to assessed value is not useful.

McCarville also submitted parts of an appraisal completed by James P. Kesterson, Kesterson Appraisal & Consulting, Fort Dodge, Iowa. The partial appraisal included the cost approach and sales comparison approach. The final estimate of value for the subject property as of January 15, 2009, was \$372,000. We find that the January 15, 2009, date is reflective of a January 1, 2009, assessment date. We also note Kesterson is the Chairman of the Webster County Board of Review but he did not take part in the Board of Review decision on this property.

Finally, McCarville submitted data regarding his 2010 assessment. The 2010 assessment is not before us, therefore, the data will be disregarded. McCarville is of the opinion that the market has decreased over the last several years.

Jeannette Thanupakorn, Webster County Assessor, testified on behalf of the Board of Review. Thanupakorn stated that market data indicates a 10% increase since 2005. She stated the market data was based on arms-length transactions. Thanupakorn stated that the Board of Review was of the opinion that the subject property should be assessed at \$380,260. However, Webster County would accept the appraisal value determined by Kesterson of \$372,000.

Reviewing all the evidence, we find that the appellant has provided evidence to prove that the subject property is over-assessed. The best evidence in the record is the appraisal of James Kesterson that supports a value of \$372,000, as of January 1, 2009.

Conclusions of Law

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. Iowa Code section 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sales prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

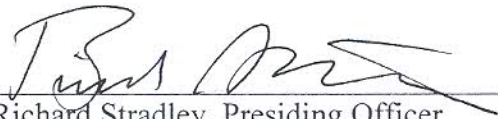
In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). MrCarville provided this Board with persuasive evidence that the current assessed value is for more than authorized by law. The Kesterson appraisal supports the change in value.

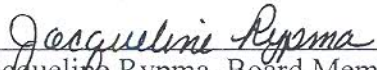
We modify the assessment of the Richard A. McCarville property as determined by the Board of Review. The Appeal Board determines the property assessment as of January 1, 2009, is \$372,000; representing \$57,010 in land value and \$314,990 in dwelling value.

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Webster County Auditor and all tax records, assessment books and other records pertaining to the assessment referenced herein on the subject parcels shall be corrected accordingly.

THE APPEAL BOARD ORDERS that the assessment of the McCarville property, located at 2917 Oak Tree Circle, Fort Dodge, Iowa, as of January 1, 2009, set by the Webster County Board of Review is modified as set forth herein.

Dated this 21 day of December, 2010.


Richard Stradley, Presiding Officer


Jacqueline Rypma, Board Member


Karen Oberman, Board Chair

Copies to:

Richard A. McCarville
2917 Oak Tree Circle
Fort Dodge, IA 50501
APPELLANT

Cori Kuhn Coleman
Dubuque County Assistant Attorney
702 1st Ave S
Fort Dodge, IA 50501
ATTORNEY FOR APPELLEE

Carol Messerly
Webster County Auditor
703 Central Avenue
Fort Dodge, IA 50501

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>12-21</u> , 2010	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	